



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

File: WAC-97-097-50548

Office: California Service Center

Date: SEP 19 2000

IN RE: Petitioner:  
Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER:

Public Copy

INSTRUCTIONS:

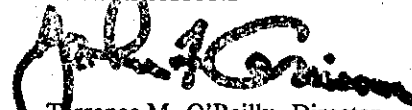
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

  
Terrance M. O'Reilly, Director  
Administrative Appeals Office

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**DISCUSSION:** The immigrant visa petition was approved by the Director, California Service Center. Upon further review of the record, the director determined that the beneficiary was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of intent to revoke the approval of the immigrant visa petition, and ultimately revoked the approval of the petition. The case was subsequently remanded to the director by the Associate Commissioner for Examinations. The matter is again before the Associate Commissioner for Examinations on certification. The certified denial will be affirmed. The appeal will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4), to serve as an educational missionary. The director revoked the approval of the petition determining that the petitioner had failed to establish the beneficiary's two years of continuous religious work experience. The director also found that the petitioner had failed to establish that it made a valid job offer to the beneficiary.

On appeal, counsel argued that the beneficiary was eligible for the benefit sought.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2000, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2000, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the

request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The beneficiary is a fifty-one-year-old married female native and citizen of Korea. The petitioner indicated that the beneficiary entered the United States as a visitor on July 28, 1991 and never departed from the United States. The petitioner further indicated that the beneficiary had never worked in the United States without permission.

The first issue to be examined is whether the petitioner has established that the beneficiary had two years of continuous work experience in the proffered position.

8 C.F.R. 204.5(m)(1) states, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on February 21, 1997. Therefore, the petitioner must establish that the beneficiary had been continuously working in the prospective occupation for at least the two years from February 21, 1995 to February 21, 1997.

In a statement submitted with the petition, the petitioner stated that the beneficiary "is a voluntary - none paid full-time educational missionary since December, 1991 to December 1996. The board meeting agreed to give a full-time educational missionary on 1997."

On December 3, 1997, the director issued a notice of intent to revoke. In response, the petitioner's former counsel stated that the beneficiary "has been a member and voluntary non-paid Educational Missionary of [REDACTED] since Dec. 1991 to June, 1997. Commencing July 1, 1997, she became a full time Educationary [sic] Missionary with the monthly salary of \$1,980.00."

On appeal, counsel submitted several church programs. Counsel argued that "the statute does not mention that qualifying volunteer employment prior to the filing of the visa petition may not be approved." Neither the statute nor the regulations stipulate an explicit requirement that the work experience must have been full-

time paid employment in order to be considered qualifying. This is in recognition of the special circumstances of some religious workers, specifically those engaged in a religious vocation, in that they may not be salaried in the conventional sense and may not follow a conventional work schedule. 8 C.F.R. 204.5(m)(2) defines a religious vocation, in part, as a calling to religious life evidenced by the taking of vows. The regulations therefore recognize a distinction between someone practicing a life-long religious calling and a lay employee. The regulation defines religious occupations, in contrast, in general terms as an activity related to a traditional religious function. *Id.* In order to qualify for special immigrant classification in a religious occupation, the job offer for a lay employee of a religious organization must show that he or she will be employed in the conventional sense of full-time salaried employment. See 8 C.F.R. 204.5(m)(4). Therefore, the prior work experience must have been full-time salaried employment in order to qualify as well. The absence of specific statutory language requiring that the two years of work experience be conventional full-time paid employment does not imply, in the case of religious occupations, that any form of intermittent, part-time, or volunteer activity constitutes continuous work experience in such an occupation.

The petitioner has not established that the beneficiary was continuously engaged in a religious occupation from February 21, 1995 to February 21, 1997. The objection of the director has not been overcome on appeal. Accordingly, the petition may not be approved.

The next issue to be examined is whether the petitioner has made a valid job offer.

8 C.F.R. 204.5(m)(4) states, in pertinent part, that:

*Job offer.* The letter from the authorized official of the religious organization in the United States must also state how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration), or how the alien will be paid or remunerated if the alien will work in a professional religious capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or solicitation of funds for support.

As was previously discussed, the petitioner claimed that the beneficiary worked on a voluntary basis from 1991 to 1997. The petitioner has not provided any explanation as to why service previously performed on a voluntary basis must now be compensated. As the beneficiary had been engaged in voluntary activities with

the church, it cannot be concluded that the church has provided a valid job offer. As such, the petitioner has not met the requirements at 8 C.F.R. 204.5(m)(4). It is further noted that the petitioner has not provided any documentary evidence (such as pay checks or Forms W-2) to support its contention that it provided the beneficiary with monetary compensation beginning in 1997.

Beyond the decision of the director, the petitioner has failed to establish that the prospective occupation is a religious occupation as defined at 8 C.F.R. 204.5(m)(2) or that the beneficiary is qualified to work in a religious occupation as required at 8 C.F.R. 204.5(m)(3). Also, the petitioner has failed to establish that it has the ability to pay the proffered wage as required at 8 C.F.R. 204.5(g)(2). As the appeal will be dismissed on the grounds discussed, these issues need not be examined further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

**ORDER:** The certified denial is affirmed. The appeal is dismissed.